



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hazeltine Corporation

File: B-235239.2

Date: January 16, 1990

DIGEST

Contracting agency's determination not to terminate contract award based solely on an FBI record of an interview with a former employee of the agency indicating that the awardee bribed the former employee to help it obtain the award will not be disturbed where (1) the awardee denies the alleged wrongdoing, leaving the charges disputed; (2) a criminal investigation of the alleged wrongdoing is ongoing; and (3) the agency states that if evidence of misconduct by the awardee to support terminating the contract is uncovered, corrective action will be taken at that time.

DECISION

Hazeltine Corporation protests the award of a contract to NavCom Defense Electronics, Inc. (formerly Gould, Inc.), pursuant to request for proposals (RFP) No. N00019-87-R-0140, issued by the Naval Air Systems Command (NAVAIR) for production of test sets (designated as UPM-() by the Navy) for Identification Friend or Foe (IFF) units. Hazeltine charges that NavCom/Gould paid bribes to a NAVAIR employee to give the firm source selection-sensitive information in order to obtain a competitive advantage in the source selection process. Hazeltine also asserts that NavCom/Gould had an agreement to pay that same NAVAIR employee a large sum of money, contingent on NavCom/Gould being awarded the production contract, in return for his helping NavCom/Gould win the competition.

We deny the protest.

The procurement was conducted by the Navy to secure production quantities of IFF test sets for the Army, Air Force, and Navy. It was preceded by two research and development contracts that were awarded to Hazeltine and NavCom/Gould in 1982. The firms successfully completed the research and development contracts and produced sample products. Accordingly, the competition for the production

contract, which was initiated in December 1987, was limited to Hazeltine and NavCom/Gould as the only qualified offerors. Initial offers were submitted, negotiations conducted, and best and final offers (BAFOs) received by the Navy.

Prior to award, the Federal Bureau of Investigation (FBI) began an investigation (as part of Operation Ill Wind, a criminal investigation involving a number of Department of Defense procurements) to ascertain if Hazeltine had engaged in any criminal activities in pursuit of the IFF test sets production contract. On January 6, 1989, Hazeltine pleaded guilty to charges of conspiracy to defraud the government in connection with illegal payments it had made through consultants to a NAVAIR employee (a supervisory electronics engineer who was Branch Head of Ships Systems Engineering at NAVAIR and who was a member of the procurement review board for the IFF test sets production contract) to obtain evaluation-sensitive and other inside information in an attempt to win the IFF test sets production contract. As a result, Hazeltine was suspended from contracting with the government by the Navy from January 11 to April 11, 1989. Ultimately, a firm, fixed-price contract (contract No. N00019-88-C-0228) was awarded to NavCom/Gould on February 3, 1989.

Hazeltine filed its initial protest in our Office on April 18, 1989, alleging that NavCom/Gould had used bribery to obtain the production contract. In support of its protest, Hazeltine submitted an article from The Washington Post, dated April 5, 1989, concerning Operation Ill Wind. The article stated that the NAVAIR employee in question admitted, while testifying as a prosecution witness in the trial of three Teledyne Electronics executives, that he had received monthly payments for inside information on military contracts from a certain consultant. Hazeltine alleged that this same consultant represented NavCom/Gould in the present procurement, and Hazeltine charged that NavCom/Gould must have paid illegal bribes for source selection-sensitive information in the present procurement for IFF test sets. The article did not specifically indicate that illegal payments had been made on behalf of NavCom/Gould to the NAVAIR employee for inside information in connection with the IFF test set procurement.

Hazeltine also submitted portions of a transcript from the NAVAIR engineer's testimony in the trial. Among other things, the transcript revealed that the NAVAIR engineer, having already pleaded guilty to conspiracy to defraud the United States, testified that he had accepted bribes from the above-mentioned consultant for inside information in

more than one defense procurement. The NAVAIR employee did not mention the IFF test sets procurement in the portion of the testimony provided by the protester.

We dismissed Hazeltine's initial protest because the Navy informed our Office that it would investigate the allegation that NavCom/Gould had obtained the UPM-() production contract by fraudulent means and that the Navy would take corrective action (including terminating the contract for default or declaring the contract void, if appropriate) depending on the results of the investigation. We stated that Hazeltine could refile its protest if its allegation was substantiated by the Navy's investigation and Hazeltine was not satisfied that the Navy had taken appropriate corrective action. Hazeltine Corp., B-235239, June 22, 1989, 89-1 CPD ¶ 592.

On September 7, 1989, Hazeltine asked that we reinstate its protest on the basis that documents released by the Navy concerning its investigation or otherwise uncovered by Hazeltine show that NavCom/Gould did, in fact, bribe the NAVAIR engineer to obtain inside information giving it an illegal competitive advantage in the procurement. More specifically, Hazeltine alleges that the NAVAIR employee provided NavCom/Gould with a document describing Hazeltine's design for its UPM-() test set. Hazeltine further asserts that NavCom/Gould received "quantity, budget and other bid information (including the initial and BAFO offering prices of Hazeltine) concerning the UPM procurement for a fee of \$40,000--contingent upon NavCom/Gould's winning the contract." Hazeltine also alleges that the NAVAIR engineer told NavCom/Gould's consultant after BAFOs had been evaluated that NavCom/Gould had lost the competition because Hazeltine's BAFO was lower in price than NavCom/Gould's BAFO.

Hazeltine relies on information contained in various documents (including affidavits filed by the FBI in support of requests for search warrants and NavCom/Gould's own responses to the Navy's investigation) as support for its allegations. The most important document relied upon by Hazeltine is a record of interviews between the FBI and the NAVAIR engineer, indicating that the engineer stated that he accepted payments from NavCom/Gould in return for inside information on the IFF test set procurement.

The allegations made by Hazeltine are serious charges of criminal conduct by a government employee and NavCom/Gould's employees and consultant. Accordingly, we have examined the record compiled in this protest carefully in light of the grave nature of the matters raised by the protester. As

discussed in detail below, the current record does not substantiate Hazeltine's allegations.

After the Navy obtained the FBI interview notes allegedly showing that the NAVAIR employee admitted accepting bribes from NavCom/Gould's consultant in return for inside information concerning the procurement, the Navy forwarded the interview notes to NavCom/Gould and asked that firm why its contract should not be declared void or terminated for the convenience of the government. In a series of letters, the Navy asked NavCom/Gould a host of questions concerning its conduct and the conduct of its consultant during the procurement. NavCom/Gould denies any wrongdoing by its employees and consultant in connection with the UPM-() test sets procurement. Moreover, NavCom/Gould states that, because of the Navy's inquiries, it conducted its own investigation. NavCom/Gould claims that it has no knowledge of any illegal actions by its employees or consultant nor those of its predecessor corporation and that it found nothing in its records to support the NAVAIR engineer's claims of fraudulent activities.

NavCom/Gould admits that it or its predecessors have used the named consultant on various procurements over about a 20-year period. However, NavCom/Gould denies that it ever authorized that consultant to pay bribes to the NAVAIR engineer to gain a competitive advantage in this procurement. In this connection, NavCom/Gould has submitted an affidavit from the consultant wherein he swears:

"At no time [during or after he agreed to represent NavCom/Gould concerning the test set procurement] did . . . any officer, or employee of Gould discuss with or authorize me to make payments or promises of payment, or provide or promise to provide any other thing of value, to [the NAVAIR engineer] or to any other government official for any purpose including to influence the award. . . ."

With regard to Hazeltine's first allegation that the NAVAIR engineer provided NavCom/Gould with a document describing Hazeltine's design for its UPM-() test set, NavCom/Gould denies that it paid for or received Hazeltine's design.

Concerning Hazeltine's allegation that NavCom/Gould received "quantity, budget and other bid information (including the initial and BAFO offering prices of Hazeltine) concerning the UPM procurement for a fee of \$40,000--contingent upon NavCom/Gould's winning the contract," NavCom/Gould again denies paying for or receiving any such information from the

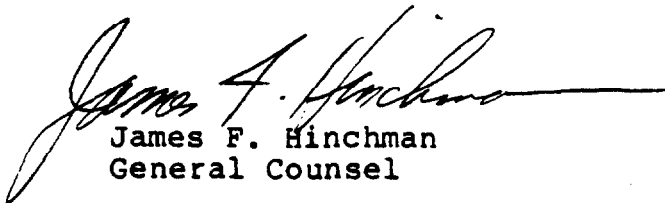
NAVAIR employee. NavCom/Gould points out that the NAVAIR engineer allegedly said that the \$40,000 bribe he was to receive was to be paid through the consultant whose monthly retainer would be raised to cover this amount; however, NavCom/Gould reports that the consultant's retainer was actually reduced during the UPM-() competition.

Finally, with regard to Hazeltine's allegation that the NAVAIR engineer told NavCom/Gould's attorney after BAFOs had been evaluated that NavCom/Gould had lost the competition because Hazeltine's BAFO was lower in price than NavCom/Gould's BAFO, NavCom/Gould denies that charge.

In sum, the record currently before us contains conflicting statements regarding the allegations raised by Hazeltine; the FBI interview notes indicate that the NAVAIR employee stated that he received payments from NavCom/Gould's consultant in return for inside information on the competition, a charge that NavCom/Gould denies.

We have contacted the Naval Investigative Service (NIS) and ascertained that both NIS and the FBI are presently conducting investigations into NAVAIR's and NavCom/Gould's conduct in this procurement to determine if there were any criminal activities leading to the award to NavCom/Gould. We also furnished NIS with copies of Hazeltine's April 18 and September 7 protest letters for use in that investigation. Thus, an investigation is still being conducted by the responsible federal agencies. At this point in the investigation the record before us does not establish that the procurement was tainted by fraud as Hazeltine alleges. Under these circumstances, we will not question the Navy's decision that the current record does not warrant termination of NavCom/Gould's contract at this time. Compare Litton Sys., Inc., 68 Comp. Gen. 422 (1989), 89-1 CPD ¶ 450, in which we sustained a protest and recommended that the Air Force terminate the awardee's contract for the convenience of the government, because of evidence that the awardee had improperly obtained (through a consultant) procurement-sensitive documents concerning the protester's proposal during the conduct of the procurement.

The protest is denied.


James F. Hinchman
General Counsel